

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2013-SA-01462-COA**

**THE PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM OF MISSISSIPPI**

**APPELLANT**

**v.**

**VICKIE COMARDELLE**

**APPELLEE**

DATE OF JUDGMENT: 08/09/2013  
TRIAL JUDGE: HON. WINSTON L. KIDD  
COURT FROM WHICH APPEALED: HINDS COUNTY CIRCUIT COURT  
ATTORNEY FOR APPELLANT: JANE L. MAPP  
ATTORNEYS FOR APPELLEE: WILLIAM OWEN MAYFIELD  
ANGELA E. DAVIS-MORRIS  
NATURE OF THE CASE: CIVIL - STATE BOARDS AND AGENCIES  
TRIAL COURT DISPOSITION: REVERSED BOARD OF TRUSTEES'  
ORDER DENYING BENEFITS  
DISPOSITION: REVERSED AND RENDERED - 03/24/2015  
MOTION FOR REHEARING FILED:  
MANDATE ISSUED:

**BEFORE GRIFFIS, P.J., BARNES AND ISHEE, JJ.**

**ISHEE, J., FOR THE COURT:**

¶1. The Public Employees' Retirement System of Mississippi (PERS) appeals the decision of the Hinds County Circuit Court reversing the administrative decision to deny benefits to Vickie Comardelle. Comardelle applied for duty-related retirement disability benefits on May 25, 2008, after she twisted her ankle at work, which she claims prevented her from performing her required job duties. On June 22, 2010, following two hearings on Comardelle's application, PERS entered its order approving and adopting the PERS Disability Appeals Committee's recommendation and findings of fact denying Comardelle's

request for disability benefits. Comardelle appealed the decision to the Hinds County Circuit Court, which found that PERS's decision to deny Comardelle benefits was not based on substantial evidence and reversed the order. Aggrieved, PERS filed the instant appeal.

### **STATEMENT OF FACTS**

¶2. Comardelle was employed as a teacher's assistant by the Pearl River County School District for a little over five years. On October 7, 2003, Comardelle slipped and twisted her right ankle on some steps near the ladies' lounge while at work. At the time she fell, Comardelle was teaching art as an activities teaching assistant. After she twisted her ankle, she was transferred to the health and life-skills class because it did not require as much standing and walking during the day, and by that time, she was using arm crutches to help her stand and walk. Comardelle first saw Dr. Simon Finger on October 9, 2003, for ankle pain, and she was diagnosed with an ankle sprain, prescribed Darvocet, and given an ankle corset to wear. Dr. Finger ordered an MRI and a nerve conduction study (NCS). The MRI was performed on November 23, 2003, and showed a small benign-looking cyst in the neck of the talus; the NCS was given on December 12, 2003, and came back with normal results.

¶3. On February 20, 2004, Dr. Keith Melancon performed surgery on her ankle, at which time he did a tarsal tunnel release and an anterior tarsal tunnel release at Southern Surgery Center in Hattiesburg, Mississippi, to take pressure off the nerves in Comardelle's foot, and he removed the small benign cyst on her ankle. Comardelle followed up with Dr. Melancon every two months after the surgery. At each visit, Comardelle complained of pain in her right foot and ankle. On March 9, 2004, she went to the emergency room due to right lower

leg pain and fever. On November 1, 2004, Dr. Melancon performed an MRI, which showed an area of resolving hematoma or cellulitis, but was otherwise normal. On November 9, 2004, Dr. Melancon saw Comardelle with complaints of nerve pain. He diagnosed her with early reflex sympathetic dystrophy (RSD), which occurred following her ankle sprain, and referred her to Dr. Thom Tarquinio with University Orthopaedics. Dr. Tarquinio performed a physical examination of Comardelle on February 10, 2005, and reviewed x-rays of her right ankle before he also diagnosed her with complex regional pain syndrome (CRPS), formerly known as RSD. Dr. Melancon then referred Comardelle to Dr. Matthew C. Wallack for a series of lumbar sympathetic blocks in March, April, and May 2005 to help relieve her pain. The sympathetic blocks seemed to relieve the pain for about two weeks after each injection. Dr. Wallack also diagnosed her with CRPS. Next, on January 12, 2006, Dr. Melancon referred Comardelle to Dr. Todd Sitzman at Advanced Pain Therapy LLC, who agreed with the CRPS diagnosis, and believed she would be a good candidate for a lumbar spinal neurostimulator. Comardelle then received three more sympathetic blocks from Dr. Wallack in January, February, and March 2006, with the same initial successful results that she had in 2005; but the blocks wore off quickly.

¶4. Before implanting the lumbar spinal neurostimulator, Dr. Sitzman referred Comardelle to Angela Koestler Ph.D. for a psychological evaluation. Dr. Koestler opined that Comardelle could undergo the implantation procedure, and she diagnosed Comardelle with adjustment disorder with anxiety and depressed mood based on the symptoms of anxiety and depression she was experiencing due to her concerns about her persistent pain and

diminished quality of life. On June 2, 2006, Dr. Sitzman implanted a lumbar spinal neurostimulator that was successful in significantly reducing the pain Comardelle was experiencing in her right lower extremity for a couple of months. However, in September 2006, Comardelle began complaining of pain in her left buttock. After treating the site with no improvement, Dr. Sitzman recommended a pocket site revision, which was done on January 26, 2007. She continued to see Dr. Sitzman throughout 2007 with complaints of pain and weakness in her lower extremities.

¶5. Comardelle sought psychological counseling from GERALYN DATZ Ph.D. to help her cope with her anxiety regarding her prognosis. Dr. Datz performed several tests and recommended she enroll in a twelve-session pain-management program and six sessions of individual psychotherapy for relaxation training. Dr. Datz diagnosed Comardelle with “Axis I – pain disorder with associated psychological factors and a general medical condition,” and Axis III – CRPS.

¶6. On October 1, 2008, PERS sent Comardelle to Dr. David Collipp of NewSouth NeuroSpine for an independent medical evaluation (IME). Dr. Collipp examined Comardelle and was of the opinion that there was no objective basis for the CRPS-I diagnosis. He believed that Dr. Melancon and Dr. Sitzman based their restrictions on subjective complaints; he did not think there were any restrictions for Comardelle, regarding her work injury or otherwise.

¶7. PERS also referred Comardelle to Julie Walker, an occupational therapist at Methodist Outpatient Rehabilitation, on January 19, 2009, for a functional capacity evaluation (FCE).

Walker observed multiple times that Comardelle “demonstrated significant symptom magnification during evaluation.” Walker noted that Comardelle had inconsistent tremors that were “volitional” at times and then absent at times. Walker stated that it was very difficult to make any recommendations because she believed Comardelle was magnifying and exaggerating her symptoms and because of the inconsistencies that she noted during Comardelle’s evaluation.

¶8. Comardelle next went to see Dr. Jeff Summers on April 17, 2009. Dr. Summers noted that Comardelle was very anxious and that she appeared to have “tremors” in her upper and lower extremities; however, “the tremors would extinguish completely with distraction.” On the day of her examination, Comardelle reported that her pain scale was a seven out of ten, and that, unless she was completely sedentary, her pain scores were never lower than that. Dr. Summers did not believe that Comardelle was suffering from CRPS at the time of the examination, but he did believe that she had “at some point.” He attributed her leg discoloration to the chronic use of her electric blanket, since the anterior thigh and leg that were in contact with the blanket were more discolored than the posterior leg where the blanket was lightly wrapped, and the backs of her thighs were not discolored at all. He also included in his report the fact that in 2005, which was after her accident, Comardelle was able to run and swim with her children. Dr. Summers concluded by acknowledging that he did not have her most recent medical records, but he believed her problems involved a somatization or conversion disorder.

¶9. Finally, PERS ordered a complete psychiatric evaluation from forensic consultant

John Montgomery. After evaluating Comardelle in his office on November 21, 2009, and reviewing Dr. Koestler's psychological report, Dr. Montgomery found that, in his opinion, Comardelle's primary psychiatric diagnosis was undifferentiated somatoform disorder and depression, secondary to a medical condition and pain disorder. He believed that Comardelle's physical limitations were not consciously feigned, but appeared to be psychogenic in nature. He further stated that while "the onset of Ms. Comardelle's symptoms appear[ed] to have occurred in the context of two work-related injuries[,] it [was] his] opinion that other interpersonal and psychological factors [were] likely contributing to her level of distress and impairment." Finally, Dr. Montgomery concluded that "[i]n her current state, Ms. Comardelle [was] not able to perform the duties of her former profession. To what extent her psychogenic/somatoform symptoms contribute[d] to her overall disability status [was] unknown."

¶10. The Disability Appeals Committee held two hearings on Comardelle's application for benefits on September 18, 2009, and March 5, 2010. PERS entered its order approving and adopting the Committee's recommendation and findings of fact denying Comardelle's request for disability benefits on June 22, 2010. Comardelle appealed this decision to the Hinds County Circuit Court. The circuit court found the PERS Board of Trustees' (Board) decision to be arbitrary and capricious and reversed the decision. Aggrieved, PERS filed this appeal.

### **STANDARD OF REVIEW**

¶11. Uniform Rule of Circuit and County Court Practice 5.03 limits this Court's ability to

reverse an agency's decision unless the decision was: (1) not supported by substantial evidence, (2) arbitrary and capricious, (3) beyond the agency's power to make, or (4) in violation of the complainant's statutory or constitutional rights. *Case v. Pub. Employees' Ret. Sys.*, 973 So. 2d 301, 310 (¶20) (Miss. Ct. App. 2008). The Mississippi Supreme Court has held: "the question here is not whether there was evidence in support of [the claimant's] disability, but whether there was substantial evidence to support the finding of the administrative agency. The standard of review limits this Court to reviewing the lower court's decision to determine whether the record can support this finding." *Thomas v. Pub. Employees' Ret. Sys. of Miss.*, 995 So. 2d 115, 120 (¶21) (Miss. 2008) (quoting *Pub. Employees' Ret. Sys. v. Dishmon*, 797 So. 2d 888, 892 (¶12) (Miss. 2001)).

## **DISCUSSION**

¶12. Before discussing the merits of this case, we will address PERS's motion to strike portions of Comardelle's brief and attached exhibits. The Mississippi Supreme Court passed the motion to this Court for consideration with the merits of the appeal, and it is now time for this Court to make a ruling. PERS contends that Comardelle included matters in her brief and exhibits that were outside of the record at the administrative hearing or circuit court level. Specifically, PERS argues that pages twenty-two and twenty-three of Comardelle's brief contain the results of Comardelle's Mississippi Workers' Compensation and United States Social Security Administration claims. Comardelle concedes that the results post-date the PERS administrative proceedings and the PERS Board of Trustees' final order denying Comardelle's request for benefits; however, Comardelle argues that the workers'

compensation claim was part of the record before the Hinds County Circuit Court when it issued its opinion and order on August 9, 2013.

¶13. Mississippi Code Annotated section 25-11-120(2) (Rev. 2010) makes it clear that an appeal of this nature “shall be made solely on the record before the board.” It is well established that “[t]his Court does not rely on assertions made in briefs, but only on facts preserved within a record certified by law.” *Burnett ex rel. Islam v. Burnett*, 792 So. 2d 1016, 1019 (¶8) (Miss. Ct. App. 2001). Comardelle’s PERS hearing was held on September 18, 2009, and the PERS Board of Trustees’ final order denying benefits was filed on June 22, 2010. The order approving settlement from the Workers’ Compensation Commission was issued on October 20, 2011, and the final decision of the Social Security administrative law judge finding Comardelle disabled was issued January 11, 2013. Upon reviewing the record, this Court finds no evidence that the circuit court considered these results or any other evidence outside of the record when making its decision. There is no reference related to either claim in the order handed down from the Hinds County Circuit Court. Accordingly, we hereby grant PERS’s motion to strike portions of Comardelle’s brief.

**I. WHETHER THE DENIAL OF BENEFITS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

¶14. As set forth by the standard of review, this Court’s purpose is to determine whether there was substantial evidence in the record to support PERS’s finding that Comardelle was not entitled to disability benefits. The phrase “substantial evidence” requires more than a “mere scintilla” or suspicion. *Pub. Employees’ Ret. Sys. v. Marquez*, 774 So. 2d 421, 425 (¶13) (Miss. 2000). It has been defined by the Mississippi Supreme Court as “such relevant

evidence as reasonable minds might accept as adequate to support a conclusion.” *Id* (citation omitted). Mississippi Code Annotated section 25-11-113(1)(a) (Supp. 2014) contains two requirements when making a disability determination. First, after evaluating the medical evidence, the medical board must “certif[y] that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired[.]” *Id*. Next, the medical board must apply the statute’s definition of disability:

For the purposes of disability determination, the medical board shall apply the following definition of disability: the inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees' Retirement System . . . that is actually offered and is within the same general territorial work area, without material reduction in compensation.

*Id*.

¶15. The Board found that Comardelle’s doctors failed to establish that her complaints were supported by medical findings. The Board looked to the fact that Dr. Sitzman, Dr. Summers, and Dr. Collipp stated that Comardelle’s RSD exhibited unusual and atypical symptoms, and found the more accurate diagnosis to be somatization. PERS points out that Comardelle fell and twisted her ankle in October 2003 and continued to work full-time for nearly five additional years until May 2008 when her teaching position was converted to a position she was not qualified to teach because she lacked the proper certification. It was at that time that Comardelle decided she was going to retire. On appeal, the circuit court judge found that PERS failed to present any evidence that Comardelle was not disabled pursuant

to section 25-11-113. As a result, the circuit court found that PERS's conclusion was not based on substantial evidence, and issued an order reversing PERS's decision.

¶16. Upon reviewing the extensive record in this case, this Court finds that PERS's decision that Comardelle was not permanently disabled was, in fact, supported by substantial evidence. First, when Dr. Collipp examined Comardelle on October 1, 2008, he found that "[h]er EMG, MRI, and x-rays were normal," her restrictions seemed to be subjective, and there was no objective basis for the CRPS-I diagnosis. Next, Julie Walker complained after performing the FCE that she was unable to make any recommendations due to Comardelle's inconsistencies and exaggerations throughout the evaluation. Finally, Dr. Summers stated after examining her on April 17, 2009, that although she may have had CRPS in her right lower extremity in the past, he could not find any current signs or symptoms consistent with CRPS. Based on the foregoing, it appears that PERS's conclusion was consistent with testimony from multiple healthcare providers. As such, we cannot say that PERS's decision was not based on substantial evidence, nor was it arbitrary or capricious.

## **II. WHETHER THE DENIAL OF DUTY-RELATED DISABILITY BENEFITS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.**

¶17. PERS also argues that, if this Court finds Comardelle to be disabled, Mississippi Code Annotated section 25-11-114(6) (Supp. 2014) contains two additional requirements that must be met in order for her to be eligible for duty-related benefits. Section 25-11-114(6) states:

Regardless of the number of years of creditable service, upon the application of a member or employer, any active member who becomes disabled as a direct result of an accident or traumatic event resulting in a physical injury

occurring in the line of performance of duty, provided that the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and the incapacity is likely to be permanent, may be retired by the board of trustees on the first of the month following the date of filing the application but in no event shall the retirement allowance begin before the termination of state service.

¶18. As previously discussed, it is undisputed that Comardelle twisted her right ankle while at work. Comardelle argues that her twisted right ankle caused her to suffer from CRPS, which has left her disabled. However, PERS points out that several of the examining physicians, as well as an occupational therapist, did not believe Comardelle's diagnosis of CRPS was supported by medical findings. After thoroughly reviewing the medical records in this case, we find ample evidence to support PERS's findings indicating that Comardelle's condition is not disabling in accordance with the statute. With regard to this issue, this Court finds, once again, that PERS's decision was supported by substantial evidence and was neither arbitrary nor capricious.

### CONCLUSION

¶19. This Court finds that PERS's decision to deny duty-related retirement disability benefits to Comardelle was based on substantial evidence and was neither arbitrary nor capricious. The judgment of the Hinds County Circuit Court is hereby reversed, and the judgment of the Board is reinstated.

**¶20. THE JUDGMENT OF THE HINDS COUNTY CIRCUIT COURT IS REVERSED AND RENDERED. ALL COSTS OF THIS APPEAL ARE ASSESSED TO THE APPELLEE.**

**GRIFFIS, P.J., BARNES, ROBERTS, MAXWELL, FAIR AND JAMES, JJ., CONCUR. CARLTON, J., DISSENTS WITH SEPARATE WRITTEN OPINION,**

**JOINED BY LEE, C.J., AND IRVING, P.J.**

**CARLTON, J., DISSENTING:**

¶21. I respectfully dissent from the majority’s decision because I would affirm the circuit court’s finding that the denial of duty-related retirement disability benefits was not based upon substantial evidence. Like the circuit court, I find that PERS’s denial of Comardelle’s benefits was arbitrary and lacked support by substantial credible evidence. I also respectfully submit that PERS’s decision was based upon speculation.

¶22. “Employees of the State of Mississippi are eligible for regular disability benefits and duty-related benefits.” *Pub. Employees’ Ret. Sys. v. Trulove*, 954 So. 2d 501, 503 (¶11) (Miss. Ct. App. 2007). To qualify for regular disability benefits, a claimant must possess at least four years of service. Miss. Code Ann. § 25-11-113(1)(a) (Supp. 2014). In the present case, the record reflects that Comardelle possessed 5.25 years of service at the time she submitted her retirement application.

¶23. Section 25-11-113(1)(a), which establishes the legal requirements for proving a disability, defines disability as follows:

[T]he inability to perform the usual duties of employment or the incapacity to perform such lesser duties, if any, as the employer, in its discretion, may assign without material reduction in compensation, or the incapacity to perform the duties of any employment covered by the Public Employees’ Retirement System (Section 25-11-101 et seq.) that is actually offered and is within the same general territorial work area, without material reduction in compensation.

¶24. To qualify for duty-related disability benefits, a claimant bears the burden “to show that her disability is a direct result of an accident or traumatic event which occurred while she was performing her job duties.” *Trulove*, 954 So. 2d at 503 (¶12) (citing Miss. Code

Ann. § 25-11-114(6) (Supp. 2014)). In pertinent part, section 25-11-114(6), provides:

Regardless of the number of years of creditable service, upon the application of a member or employer, any active member who becomes disabled as a direct result of an accident or traumatic event resulting in a physical injury occurring in the line of performance of duty, provided that the medical board or other designated governmental agency after a medical examination certifies that the member is mentally or physically incapacitated for the further performance of duty and the incapacity is likely to be permanent, may be retired by the board of trustees on the first of the month following the date of filing the application but in no event shall the retirement allowance begin before the termination of state service.

Our statutory law further provides that “[p]ermanent and total disability resulting from a cardiovascular, pulmonary[,] or musculoskeletal condition that was not a direct result of a traumatic event occurring in the performance of duty shall be deemed an ordinary disability.”

Miss. Code Ann. § 25-11-114(7)(a) (Supp. 2014).

¶25. To qualify for regular disability benefits, Comardelle only bore the burden to prove that she possessed at least four years of service and that she was no longer able to perform her duties as a teacher’s assistant. I find the record reflects that Comardelle met her burden under statutory law to qualify for regular disability benefits. In addition, the record shows that PERS’s decision denying Comardelle’s request for duty-related disability benefits was not supported by substantial evidence but was instead based on insufficient speculation.<sup>1</sup>

¶26. The record shows that Comardelle worked as a teacher’s assistant for the Pearl River

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<sup>1</sup> See generally *Pub. Employees’ Ret. Sys. v. Finklea*, 862 So. 2d 569, 575 (¶23) (Miss. Ct. App. 2004) (finding PERS’s denial of disability benefits arbitrary and capricious because the claimant presented substantial evidence to show her condition prevented her from performing the usual duties of her employment); *Pub. Employees’ Ret. Sys. v. Thomas*, 809 So. 2d 690, 696 (¶23) (Miss. Ct. App. 2001) (affirming the trial court’s reversal of PERS’s decision to deny disability benefits).

County School District for over five years. Comardelle therefore satisfied the requirement for regular disability benefits regarding the duration of her employment. I now turn to a review of the evidence showing that Comardelle also satisfied her burden to prove a duty-related disability.<sup>2</sup>

¶27. The record contains the certification by Comardelle’s employer of her retirement-benefit application.<sup>3</sup> The record also contains Comardelle’s “First Report of Injury or Illness.” This form reflects that Comardelle notified her employer on October 7, 2003, the same date her injury occurred, that she slipped on the steps of the elementary-school campus and twisted her ankle. In addition to the “First Report of Injury or Illness,” the record also contains a “Pearl River County School District Employee Accident Report,” which certifies Comardelle’s work injury. As reflected in the record, this form is dated October 7, 2003, the same date as Comardelle’s injury and bears the signature of Elaine Welsh, the principal of the elementary school where Comardelle worked.

¶28. The record also includes Comardelle’s resignation form, which was signed by Comardelle, Welsh, and the school superintendent. The resignation application stated that Comardelle retired from her position as a teacher’s assistant due to her disability injury. In the attached “PERS Form 8,” which is a medical-information form, Comardelle further provided that her disability first prevented her from performing her job on May 19, 2008, and

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<sup>2</sup> See *Trulove*, 954 So. 2d at 505 (¶16) (finding that the claimant satisfied her burden of establishing she was disabled by an on-the-job injury when she provided the Disability Appeals Committee with her medical records and her incident report).

<sup>3</sup> The record reflects that Elaine Welsh, the principal of the elementary school where Comardelle worked, certified the application.

that her disability was as follows: “(RSD) Legs will not work[.]”<sup>4</sup> Comardelle explained on the form that she stopped working because of daily muscle spasms and pain and because her legs could not withstand the long hours on her feet. Comardelle further stated that her legs would stop working and would become painful and swollen. Comardelle also provided a summary of the physicians that had treated her in the past three to five years and the treatments she had received.

¶29. An application of relevant caselaw to the evidence in the record show that PERS’s decision was not supported by substantial evidence and that Comardelle indeed met her burden of proof. In *Public Employees’ Retirement System v. Marquez*, 774 So. 2d 421, 427 (¶22) (Miss. 2000), the Mississippi Supreme Court observed that medical diagnoses by licensed physicians constitute objective, rather than subjective, evidence of disability. The *Marquez* court found that PERS failed to adequately explain why it rejected objective medical evidence of the claimant’s disability. *Id.* at 429 (¶¶31-33).<sup>5</sup> In reaching its decision, the supreme court stated that, “[i]f medical diagnoses by licensed physicians are to be labeled ‘subjective’ evidence of medical ailments, it is unclear what PERS would consider to be ‘objective’ evidence.” *Id.* at 427 (¶22).

¶30. Like the claimant in *Marquez*, Comardelle provided recent medical evidence to

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<sup>4</sup> The record reflects that Dr. Melancon and Dr. Tarquinio diagnosed Comardelle with RSD, which is a nerve disorder where severe pain becomes widespread from the trauma site.

<sup>5</sup> See also *Pub. Employees’ Ret. Sys. v. Dearman*, 846 So. 2d 1014, 1018 (¶11) (Miss. 2003) (finding that the medical evidence of disability provided by the claimant’s examining physician was objective evidence and that the record was devoid of any evidence to show the claimant lacked a disability).

establish that she was incapable of performing her duties as a teacher's assistant. In finding that Comardelle met her burden of proof, I must acknowledge that jurisprudence establishes that substantial evidence means more than a mere scintilla or suspicion. *See Henley v. Pub. Employees' Ret. Sys. of Miss.*, 26 So. 3d 1108, 1110 (¶13) (Miss. Ct. App. 2010). Rather, the evidence must provide "an adequate basis of fact from which the fact in issue can be reasonably inferred." *Id.* (citation omitted).

¶31. Substantial evidence that supports an agency's decision is, "in fact, the absence of credible evidence presented on behalf of the party having the burden of proof on the issue that compels the denial of relief." *Id.* (citation omitted). As previously discussed, PERS cannot simply choose to ignore uncontroverted evidence of a treating physician. *See Pub. Employees' Ret. Sys. v. Dearman*, 846 So. 2d 1014, 1018 (¶11) (Miss. 2003). *Cf. Pub. Employees' Ret. Sys. v. McDonnell*, 70 So. 3d 264, 269-71 (¶¶13-15) (Miss. Ct. App. 2011) (finding that PERS's decision denying disability benefits lacked support by substantial evidence). In the present case, the record contains substantial objective medical evidence to support Comardelle's disability.

¶32. Comardelle initially reported twisting her right ankle and experiencing foot pain on October 7, 2003, when she slipped at work. As stated, the record reflects that Comardelle's employer certified both her accident report and her disability-retirement application. The record also reflects that Comardelle's employer raised no dispute as to whether Comardelle fell during the course and scope of her work. In addition, Comardelle's employer failed to dispute Comardelle's claimed work-related injury and disability.

¶33. The objective medical evidence in the record reflects that Comardelle met her burden to provide substantial evidence to support her disability retirement application and claim. As reflected in the record, Dr. Finger, Comardelle's initial treating physician, found Comardelle's x-rays to be normal and diagnosed Comardelle with an ankle sprain. After ordering an MRI, Dr. Finger made an objective finding that Comardelle had a small cyst in the neck of the talus. When Comardelle returned to Dr. Finger on November 26, 2003, he reported that she presented with complaints of tenderness in her right ankle and numbness in her right foot. Although the NCS study returned normal results, Dr. Finger thought Comardelle might have flexor hallucis tendonitis and gave her a steroid injection.

¶34. On January 6, 2004, Dr. Melancon conducted an initial examination of Comardelle due to her complaints of weakness, pain, and swelling in her right ankle. Dr. Melancon injected Comardelle with Lidocaine after finding that Comardelle presented with anterolateral capsulitis and tarsal tunnel syndrome. Tarsal tunnel syndrome results from an impingement or compression of the nerves going through the tarsal tunnel of the foot, which causes a painful foot condition and cuts off blood flow to the affected nerves.

¶35. On February 3, 2004, Comardelle underwent another MRI and returned to Dr. Melancon. The record reflects that Dr. Melancon opined that several areas of Comardelle's ankle appeared suspicious for anterolateral dome lesion and possible internal derangement of the ankle joint. Based on his objective medical findings and diagnosis, Dr. Melancon recommended that Comardelle undergo tarsal tunnel surgery to release the nerves compressed in her ankle.

¶36. On February 20, 2004, Dr. Melancon performed an ankle nerve repair surgery to release the compression of the nerves in the tarsal tunnel of Comardelle's foot. Following the surgery, Comardelle's pain continued, and Dr. Melancon eventually diagnosed her with RSD, which is a nerve disorder. *See Neill v. Waterway Inc./Team Am.*, 994 So. 2d 196, 198 (¶8) (Miss. Ct. App. 2008) (noting that claimant's physician found that claimant suffered from RSD, a nerve dysfunction, which caused claimant's carpal tunnel pain); *Howard v. Howard*, 968 So. 2d 961, 970-71 (¶¶16-18) (Miss. Ct. App. 2007) (acknowledging evidence that husband's RSD, which was a nerve disorder, caused pain, sweating, loss of feeling, and numbness, and that the RSD resulted as a complication of the husband's carpal tunnel release surgery).

¶37. On March 9, 2004, less than a month after her ankle nerve repair surgery, Comardelle presented to Forrest General Hospital's emergency room with complaints of right lower leg pain and fever. The objective medical observations documented in the emergency-room physician's records show that Comardelle suffered minimal swelling in her right calf, her surgical incision appeared inflamed, and her right lower extremity seemed cool to the touch. Comardelle also reported chronic decreased sensation in her lower right extremity. The emergency-room medical records revealed further objective medical evidence, including the fever, swelling, inflammation, and cool skin temperature that Comardelle experienced at the time. At a post-surgical follow-up appointment, Dr. Melancon observed that Comardelle's scar was likely trying to contract, which caused her to walk improperly on the outside of her foot. Dr. Melancon further observed that walking on the outside of her foot caused

Comardelle to experience pain in her right foot and ankle.

¶38. On November 1, 2004, another MRI was ordered. The results showed abnormal signal within the subcutaneous fat, which Comardelle's doctor thought might represent an area of resolving hematoma or cellulitis. On November 9, 2004, Comardelle reported severe nerve pain without swelling of her ankle. The record also reflects that the skin on Comardelle's leg and foot had begun to peel. I submit that we must acknowledge that this evidence in Comardelle's medical records regarding the abnormalities captured by the MRI and the peeling of Comardelle's skin add to the objective medical evidence supporting Comardelle's claim. Following these developments, Dr. Melancon stated his belief that Comardelle had early RSD.<sup>6</sup> He prescribed Comardelle Neurontin and referred her to Dr. Tarquinio.

¶39. On January 4, 2005, Dr. Melancon injected Comardelle's right ankle with Lidocaine. On February 10, 2005, Comardelle saw Dr. Tarquinio, who diagnosed her with CRPS.<sup>7</sup> For pain relief, Comardelle began extensive physical therapy and underwent several lumbar sympathetic blocks. In 2006, Dr. Sitzman inserted Comardelle with a temporary electric nerve stimulator. Comardelle was able to stop taking narcotics for about a month because the stimulator alleviated her pain. However, the relief was temporary, and the pain returned after several months. Comardelle also began experiencing pain in her left leg and hip, which Dr. Sitzman attributed to an exacerbation of Comardelle's RSD. Dr. Sitzman later found that

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<sup>6</sup> As noted in the majority's opinion, RSD refers to reflex sympathetic dystrophy.

<sup>7</sup> As noted in the majority's opinion, CRPS refers to complex regional pain syndrome, which was formerly known as RSD.

Comardelle's RSD, which had begun in her right ankle, had progressed to her left lower extremity as well.

¶40. The record reflects that Comardelle reported the pain from her RSD continued to move up her right leg. The record also reflects that Comardelle presented with complaints of leg tremors, which she stated increased with normal activity such as walking, standing, or sitting for too long. Comardelle further complained that her legs would turn inward and her toes would curl upward. The record shows that Comardelle stated she wore high-topped tennis shoes, except when bathing, and that Dr. Melancon had given her a boot to wear at night to help keep her legs straight. Comardelle also provided that, if her toes continued to curl upward, she would be unable to stand and might have to have her leg amputated. In addition, Comardelle stated that she used a wheelchair on a weekly basis.

¶41. Dr. Datz, a psychologist, diagnosed Comardelle with "Axis I – pain disorder with associated psychological factors and a general medical condition" and Axis III – CRPS. Comardelle returned to work after a six-week absence. She taught art until May 2008, when she quit due to the pain and her other symptoms. The record reflects Comardelle's statement that she tried to use crutches at work but that her fingers would become cold when writing or typing.

¶42. On October 1, 2008, PERS requested that Dr. Collipp perform an IME on Comardelle. Dr. Collipp found that the results of Comardelle's x-rays and MRIs were normal. Despite the prior diagnoses provided by Dr. Melancon, Dr. Sitzman, and Dr. Datz, and despite the objective medical findings documented in the record, Dr. Collipp found no objective basis

for the CRPS diagnosis. He also opined that Comardelle lacked objective evidence of her subjective leg pain. On April 17, 2009, Dr. Summers also performed an IME on Comardelle. In contrast to Dr. Collipp, Dr. Summers did not exclude a diagnosis of RSD. Instead, Dr. Summers opined that he did not believe Comardelle suffered from RSD at the time of his exam, but he thought she might have had RSD in her right lower leg after her injury.

¶43. The record shows that, in denying Comardelle’s request for disability benefits, PERS and the Disability Appeals Committee asserted that Comardelle’s symptoms lacked visible and objective supporting evidence and that her symptoms appeared to result from somatization. However, PERS’s decision to deny Comardelle disability benefits failed to rebut or even address the objective medical evidence in the record that supported Comardelle’s injury and disability. PERS’s decision also disregarded the objective diagnoses made by Dr. Melancon, Dr. Sitzman, and Dr. Datz.

¶44. After reviewing the record, I find that PERS and the Disability Appeals Committee denied Comardelle’s request for disability benefits based upon Dr. Collipp’s flawed diagnosis of somatization and the FCE asserting that Comardelle’s complaints of increased pain and shaking were attributable to somatization. In attributing Comardelle’s symptoms to somatization disorder, Dr. Collipp and Dr. Summers, who both performed IMEs on Comardelle, failed to exclude the diagnoses opined by Dr. Melancon, Dr. Sitzman, and Dr. Datz that Comardelle’s increased pain and other symptoms stemmed from RSD etiology and the exacerbation of that condition.<sup>8</sup> Dr. Collipp and Dr. Summers also failed to follow the

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<sup>8</sup> Dr. Datz, a psychologist, diagnosed Comardelle with “Axis I – pain disorder with associated psychological factors and a general medical condition” and Axis III –

diagnostic criteria of somatic symptom disorder.<sup>9</sup>

¶45. In the present case, PERS’s decision lacked supporting credible evidence since PERS ignored the objective medical evidence and diagnoses in the record from various treating physicians and instead relied on a diagnosis of a psychological condition that failed to exclude other etiologies for Comardelle’s complaints, as required by the pertinent diagnostic criteria. The record contains credible evidence to show that Comardelle suffered an accidental ankle injury at work, resulting in a painful foot condition, ankle nerve repair surgery, RSD, increased pain, and ultimately, her disabling condition. Moreover, the record reflects that Comardelle’s claim for duty-related disability benefits is supported by substantial

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CRPS. As previously stated, the record reflects that CRPS refers to complex regional pain syndrome and was formerly identified as RSD.

<sup>9</sup> The medical testimony supporting a diagnosis of somatoform disorder was provided when criteria from the previous edition of the Diagnostic and Statistical Manual of Mental Disorders, the DSM-IV, were relied upon. As explained by the DSM-V, the disorder was overdiagnosed due to an overemphasis of medically unexplained symptoms. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 309 (5th ed. 2013). Furthermore, the DSM-V provides that “[i]t is not appropriate to give an individual a mental disorder diagnosis solely because a medical cause cannot be demonstrated.” *Id.* However, even under the previous criteria used in the DSM-IV, a physician should first rule out general medical conditions and substance-induced etiologies for an individual’s claimed symptoms before reaching a diagnosis of somatoform disorder. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 485 (4th ed. text revision 2000). The DSM-V also provides that somatic symptoms may be concurrently associated with another medical condition. See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* 311 (5th ed. 2013). For example, “an individual may become seriously disabled by symptoms of somatic symptom disorder after an uncomplicated myocardial infarction even if the myocardial infarction itself did not result in any disability.” *Id.* The DSM-V further explains that, when dealing with the related disorder of illness anxiety disorder, an “individual’s distress emanates not primarily from the physical complaint itself but rather from his or her anxiety about the meaning, significance, or cause of the complaint (i.e., the suspected medical diagnosis).” *Id.* at 315.

credible evidence, including substantial objective medical evidence, of a resulting RSD diagnosis and increased pain due to exacerbation of the RSD.

¶46. Based on a review of the record, I respectfully find that the decision by PERS and the Disability Appeals Committee denying Comardelle's claim for duty-related disability benefits was arbitrary and capricious and lacked support by substantial credible evidence in the record. I further submit that we should affirm the circuit court's reversal of PERS's decision.

**LEE, C.J., AND IRVING, P.J., JOIN THIS OPINION.**